No. 80-1237

In the Supreme Court of the United States

OCTOBER TERM, 1980

UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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The question is whether the court of appeals erred in holding that the complaint, which alleges purposeful abridgement of the voting rights of Mexican-Americans through the at-large election of a school board, states a claim under Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, as amended.[1] Petitioners contend that (1) Section 2 does not prohibit dilution of a minority group's voting rights as a result of at-large elections and (2) the Uvalde Consolidated Independent School District is not a "State or political subdivision" within the meaning of that section.

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[1]The text of amended Section 2 is quoted in the opinion of the court of appeals (Pet. App. A-6). The court of appeals also quotes (*ibid.*) Section 4(f)(2), 42 U.S.C. 1973b(f)(2), the provisions of which are incorporated into amended Section 2.

Contrary to petitioners' view, the ruling of the court of appeals regarding the scope of the statute is not inconsistent with the decision of this Court in *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980); and the court of appeals' construction of the term "political subdivision" is supported by the reasoning of *United States* v. *Board of Commissioners of Sheffield Ala.*, 435 U.S. 110 (1978). The decision of the court of appeals in this case is not in conflict with any decision of another court of appeals. Accordingly, review by this Court is unwarranted.

1. In January 1979, the district court dismissed the amended complaint for failure to state a claim on which relief could be granted.[2] The United States appealed, and the court of appeals reversed the dismissal and remanded the case for further proceedings (Pet. App. A-1 to A-20).

The court of appeals held that Section 2 of the Act, as amended, was intended to prohibit purposeful discrimination through the use of at-large elections and that, for purposes of Section 2, a school board is a "political subdivision." Applying the principle of *Conley* v. *Gibson*, 355 U.S. 41 (1957), the court of appeals found that the allegations of the amended complaint were adequate to state a claim. Because the amended complaint alleges discriminatory purpose, the court of appeals found it unnecessary to reach the question whether Section 2 forbids "mere vote dilution" (Pet. App. A-15 n.12).

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[2]The district court had previously dismissed the original complaint without prejudice. 461 F. Supp. 117 (W.D. Tex. 1978). The United States then amended the complaint by adding an allegation that the at-large system has been implemented with the purpose of discriminating against Mexican-Americans (Pet. App. A-4 n.3).

2. The question of the scope of Section 2 is one of congressional intent, not the power of Congress. Decisions of this Court make clear that Congress has authority, under the Fourteenth and Fifteenth Amendments, to legislate with regard to such practices as the use of at-large elections to dilute the voting rights of minority groups. See, *e.g.*, *City of Rome* v. *United States*, 446 U.S. 156, 173-178, 180-182 (1980).

The court of appeals in this case properly held that Congress intended, in Section 2, to encompass practices of the type alleged in the complaint. As the court noted (Pet. App. A-13), when Congress amended that section and other provisions in 1975, the relevant committee reports expressed a specific concern for remedying the dilution of the voting rights of minority group voters—including Mexican-Americans in Texas—resulting from use of the "at-large structure." See H.R. Rep. No. 94-196, 94th Cong., 1st Sess. 18-20 (1975); S. Rep. No. 94-295, 94th Cong., 1st Sess. 27-28 (1975). Petitioners' quotations from the 1975 legislative history (Pet. 10-11) do not contradict these clear expressions of congressional purpose.[3]

Petitioners' interpretation of *City of Mobile* v. *Bolden*, *supra*, is also inaccurate. The principal issues in *Bolden* related to the standard for establishing unlawful dilution of voting rights and the kind of proof required to show a violation. Although two of the opinions discussed Section 2

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[3]Petitioners also err in suggesting (Pet. 10) that Section 2, as enacted in 1965, did not encompass dilution of minority voting rights through an at-large system. As this Court stated in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), a case involving the scope of Section 5 of the Voting Rights Act, Congress' use of expansive language in Section 2 indicated "an intention to give the Act the broadest possible scope." 393 U.S. at 566-567. See also 393 U.S. at 569.

of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments, there was no holding with regard to the scope of the statute.[4]

In short, there is no merit in petitioners' view (Pet. 7-11) that the court of appeals misread *Bolden* or that it misconstrued the purpose of the 1975 amendments to the Voting Rights Act.

3. The subsidiary question raised by the petition is whether, for purposes of Section 2, the Uvalde Consolidated Independent School District is a "political subdivision." Petitioners assert that this matter is controlled by Section 14(c)(2) of the Act, 42 U.S.C. 1973*l*(c)(2), which contains a definition of "political subdivision."[5] Petitioners' argument cannot be reconciled with *United States* v. *Board of Commissioners of Sheffield, Ala., supra,* in which the Court concluded that Section 14(c)(2) had a much more limited function, *i.e.*, "that this definition was intended to operate only for purposes of determining which political units in nondesignated States may be separately designated for coverage under § 4(b)." 435 U.S. at 128-129 (footnote omitted). In the present case, the court of appeals correctly

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[4]The plurality opinion in *Bolden,* written by Justice Stewart and joined by the Chief Justice and Justices Powell and Rehnquist, quoted the 1965 version of Section 2, referred to portions of the 1965 legislative history, and then concluded that Section 2 "adds nothing to the * * * [plaintiffs'] Fifteenth Amendment claim." 446 U.S. at 60-61. In his dissent, Justice Marshall stated (446 U.S. at 105 n.2) that he agreed with the plurality that Section 2 "contains the same standard as the Fifteenth Amendment," but that he disagreed "with the plurality's construction of that Amendment." None of the opinions in *Bolden* mentioned the 1975 amendment of Section 2 or the 1975 legislative history. As the court of appeals noted in the present case (Pet. App. A-11 to A-15), the 1975 provisions and history make clear that Section 2, as amended, rests on both the Fourteenth and Fifteenth Amendments (see Section 4(f)(1), 42 U.S.C. 1973b(f)(1)).

[5]We do not contend that the school district is a "political subdivision" within the meaning of Section 14(c)(2).

held (Pet. App. A-16 to A-20) that the Section 14(c)(2) definition of "political subdivision" does not apply to Section 2 and that the legislative history of the latter provision shows that Congress intended to reach school districts.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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Solicitor General

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